

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
THE ANNUITY, PENSION, WELFARE and APPRENTICESHIP  
SKILL IMPROVEMENT AND SAFETY FUNDS of the  
INTERNATIONAL UNION OF OPERATING ENGINEERS,  
LOCAL 137, 137A, 137B, 137C, 137R, AFL-CIO by its  
Trustees EDWARD KELLY, JEFFREY LOUGHLIN, PETER  
PATERNO, ROSS PEPE, NICHOLAS SIGNORELLI  
and NICHOLAS SIGNORELLI, JR., and JOHN and JANE DOE,  
as Beneficiaries of the ANNUITY, PENSION, WELFARE and  
APPRENTICESHIP SKILL IMPROVEMENT AND SAFETY  
FUNDS of the INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 137, 137A, 137B, 137C, 137R, AFL-CIO,

**STIPULATION OF  
SETTLEMENT &  
ORDER OF  
DISCONTINUANCE**

07-CIV-5557 (CLB)

Plaintiffs,

-against-

D.E.W. CONSTRUCTION, INC.,

Defendant.  
-----X

This Stipulation of Settlement is made by and between the parties hereto, to wit,  
Plaintiffs, THE ANNUITY, PENSION, WELFARE and APPRENTICESHIP SKILL  
IMPROVEMENT AND SAFETY FUNDS OF THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS (the "LOCAL 137 TRUST FUNDS") (hereinafter collectively  
referred to as the "Plaintiffs"), and Defendant D.E.W. CONSTRUCTION, INC. ("D.E.W.  
CONSTRUCTION").

**WHEREAS**, the Defendant is indebted to the various fringe benefit funds established for  
the benefit of the members of LOCAL 137 and known as the LOCAL 137 TRUST FUNDS, for  
unpaid contributions totaling \$36,367.60 for the period of August 1, 2005 through October 31  
2006; and

**WHEREAS**, the parties are desirous of resolving in this Stipulation of Settlement and Order of Discontinuance all disputes between them.

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the parties hereto mutually agree as follows:

1. The Defendant acknowledges that the sum of \$36,367.60 along with interest thereon totaling \$2,856.40 calculated at 10% per annum for the thirteen (13) month period of the payment plan detailed hereafter is justly due and owing to the Plaintiff LOCAL 137 TRUST FUNDS.

2. The Defendant agrees to pay the total sum of \$39,224.00 as follows:

- a. \$10,000.00 within seven (7) days of the execution of this Stipulation of Settlement; and
- b. \$2,248.00 on or before the 1<sup>st</sup> day of December, 2007;
- c. \$2,248.00 on or before the 1<sup>st</sup> day of January, 2008;
- d. \$2,248.00 on or before the 1<sup>st</sup> day of February, 2008;
- e. \$2,248.00 on or before the 1<sup>st</sup> day of March, 2008;
- f. \$2,248.00 on or before the 1<sup>st</sup> day of April, 2008;
- g. \$2,248.00 on or before the 1<sup>st</sup> day of May, 2008;
- h. \$2,248.00 on or before the 1<sup>st</sup> day of June, 2008;
- i. \$2,248.00 on or before the 1<sup>st</sup> day of July, 2008;
- j. \$2,248.00 on or before the 1<sup>st</sup> day of August, 2008;
- k. \$2,248.00 on or before the 1<sup>st</sup> day of September, 2008;
- l. \$2,248.00 on or before the 1<sup>st</sup> day of October, 2008;
- m. \$2,248.00 on or before the 1<sup>st</sup> day of November, 2008; and
- o. \$2,248.00 on or before the 1<sup>st</sup> day of December, 2008.

3. Each payment shall be made in the form of a check made payable to the "LOCAL 137 JOINT FUNDS" and forwarded to Plaintiffs' counsel, James M. Steinberg, Esq., at Brady McGuire & Steinberg, P.C., 603 Warburton Avenue, Hastings-on-Hudson, New York 10706.

4. At any time, the Defendant may pay the then remaining outstanding balance and the parties shall make an adjustment relating to interest owed through the date of such final payment.

5. The Defendant, hereafter, agrees to remain current in the payment of all fringe benefit contributions owed on behalf of the LOCAL 137 members in its employ.

6. In the event of any default by the Defendant in the payments due under the provisions of this Stipulation, and provided that said default continues for a period of five (5) days after notice to cure is sent to the Defendant *via* certified mail at 2644 Route 22, Patterson, New York 12563, the Clerk of the United States District Court for the Southern District of New York is hereby authorized to enter judgment on the application of the Plaintiffs against the Defendant in the sum of \$39,224.00 and any accrued interest, less payments received plus liquidated damages calculated on the deficiency amount of \$36,367.60 at the rate of twenty percent (20%) as prescribed by ERISA, along with attorneys' fees in the amount of \$1,750.00 and the costs and disbursements of this action in the amount of \$570.00.

7. In exchange for the prompt and full payments of the amounts identified herein the Plaintiffs waive any claims for liquidated damages and additional attorneys' fees and disbursements of this action otherwise available under the Employee Retirement Income Security Act of 1974 unless the conditions articulated in paragraph 6 must be invoked.

8. This action is hereby settled as to the Defendant herein.

**IT IS HEREBY FURTHER STIPULATED AND AGREED**, by and between the undersigned, including the attorney of record for the Plaintiffs and the Defendant appearing pro se that whereas no party hereto is an infant or incompetent person for whom a committee has been appointed and no person not a party has an interest in the subject matter of this action, the above-captioned action shall be discontinued, without costs to either party as against the other, subject to reopening in the event of default or failure of any payment, term or condition agreed

to, required or contained in this Stipulation of Settlement and Order of Discontinuance.

**IT IS HEREBY IN ADDITION STIPULATED AND AGREED**, by and between the undersigned, including the attorney of record for the Plaintiffs and the Defendant appearing pro se, that this Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same Stipulation.

Dated: Hastings-on-Hudson, New York  
October 12, 2007

BRADY MCGUIRE & STEINBERG, P.C.

*See next page*  
By: James M. Steinberg (JS-3515)  
Attorneys for the Plaintiffs  
603 Warburton Avenue  
Hastings-on-Hudson, New York 10706  
(914) 478-4293

D.E.W. CONSTRUCTION, INC.

*[Signature]*  
By: Daniel Finney  
Title: President  
EIN No. 14-1655558

*See next page*  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 137, 137A, 137B, 137C  
& 137R, ANNUITY, PENSION, WELFARE,  
and APPRENTICESHIP, SKILL  
IMPROVEMENT & SAFETY FUNDS

*See next page*  
By: Nicholas Signorelli, Trustee

**SO ORDERED:**

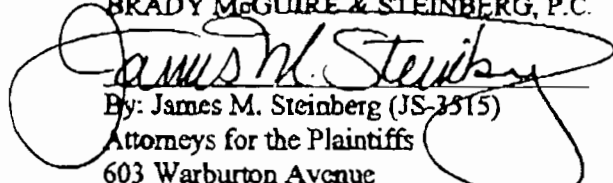
*See next page*  
\_\_\_\_\_  
The Honorable Charles L. Bricant

to, required or contained in this Stipulation of Settlement and Order of Discontinuance.

IT IS HEREBY IN ADDITION STIPULATED AND AGREED, by and between the undersigned, including the attorney of record for the Plaintiffs and the Defendant appearing pro se, that this Stipulation may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same Stipulation.

Dated: Hastings-on-Hudson, New York  
October 12, 2007

BRADY McGUIRE & STEINBERG, P.C.

  
By: James M. Steinberg (JS-3815)  
Attorneys for the Plaintiffs  
603 Warburton Avenue  
Hastings-on-Hudson, New York 10706  
(914) 478-4293

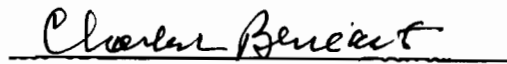
D.E.W. CONSTRUCTION, INC.

By: Daniel Finney  
Title: President  
EIN No. \_\_\_\_\_

INTERNATIONAL UNION OF OPERATING  
ENGINEERS, LOCAL 137, 137A, 137B, 137C  
& 137R, ANNUITY, PENSION, WELFARE,  
and APPRENTICESHIP SKILL  
IMPROVEMENT & SAFETY FUNDS

  
By: Nicholas Signorelli, Trustee

SO ORDERED: October 22, 2007

  
The Honorable Charles L. Bricant  
USDS

BRADY MCGUIRE & STEINBERG, P.C.

ATTORNEYS-AT-LAW

603 WARBURTON AVENUE

HASTINGS-ON-HUDSON, NEW YORK 10706

TELEPHONE NOS. (914) 478-5755 OR (914) 478-1908

TELECOPY NO. (914) 478-4142

EMAIL [bms.law@verizon.net](mailto:bms.law@verizon.net)

Direct EMAIL [james.steinberg4@verizon.net](mailto:james.steinberg4@verizon.net)

ROBERTO BRADY  
OF COUNSEL

MATTHEW G. MCGUIRE  
JAMES M. STEINBERG

\*ADMITTED IN NEW YORK AND NEW JERSEY

October 12, 2007

Via Facsimile Only

The Honorable Charles L. Brieant  
United States District Court  
300 Quarropas Street  
White Plains, New York 10601

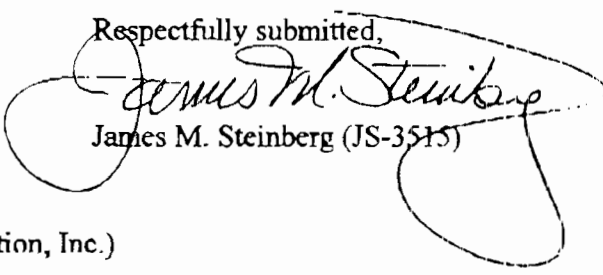
Re: The Annuity, Pension, Welfare and Apprenticeship Skill Improvement  
& Safety Funds of I.U.O.E. Local 137 v. D.E.W. Construction, Inc.  
Civil Case No. 07-CTV-5557 (CLB)

Dear Judge Brieant:

Our office represents Plaintiffs The Annuity, Pension, Welfare and Apprenticeship Skill Improvement & Safety Funds of the International Union of Operating Engineers Local 137, 137A, 137B, 137C & 137R, AFL-CIO in connection with the above-captioned matter. At this time, we are pleased to advise Your Honor that the parties have reached an amicable resolution of this matter. Accordingly, we are respectfully submitting the attached Stipulation of Settlement & Order of Discontinuance to Your Honor to be so ordered.

Thank you for your attention to this matter and please contact the undersigned with any questions.

Respectfully submitted,

  
James M. Steinberg (JS-3515)

Enc.

Cc: Mr. Daniel Finney (D.E.W. Construction, Inc.)  
Mr. Nicholas Signorelli  
Mr. Raymond H. Burgess, Jr.